

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: : CHAPTER ELEVEN
: :
LEHIGH COAL AND NAVIGATION : BANKRUPTCY NO.: 5-08-bk-51957
COMPANY, :
: :
DEBTOR :
: :
THE OFFICIAL COMMITTEE OF :
UNSECURED CREDITORS OF :
LEHIGH COAL AND NAVIGATION :
COMPANY, :
: :
PLAINTIFF : { **Nature of Proceeding:** Defendant's
vs. : Motion to Dismiss Counts II and III of
: Plaintiff's Complaint (Doc. #5) }
: :
PENNEX POWDER COMPANY, :
: :
DEFENDANT : **ADVERSARY NO.: 5-10-ap-00316**

OPINION¹

As part of its Answer, Pennex Powder Company, the above-captioned Defendant, has filed a Motion to Dismiss Counts II and III of the underlying adversary.

The Motion to Dismiss Count II was abandoned by the Defendant which represented that Count II did state a viable cause of action under Section 548. See Brief in Support of Motion to Dismiss Counts II and III of Plaintiff's Complaint (Doc. #9) at page 2.

The Defendant argues that Count III of the Complaint does not meet the pleading requirements of Federal Rule of Bankruptcy Procedure 7008 because the averments of Count III do not provide reasonable notice of the claims that are being asserted by Count III. After

¹ Drafted with the assistance of Richard P. Rogers, Law Clerk.

reviewing Count III of the Complaint and the other averments of the Complaint incorporated by reference therein, the Court finds that the Complaint survives scrutiny under the dictates of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *accord Ashcroft v. Iqbal*, 556 U.S. —, 129 S.Ct. 1937, 173 L.Ed.2d 868, 884 (2009). Utilizing those standards, I find the instant Complaint survives the instant Motion to Dismiss.

An Order will follow.

By the Court,



Date: April 11, 2011

John J. Thomas, Bankruptcy Judge
(CMS)